IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 371 OF 2005

Smt.Amarjeet Kaur w/o.Joginder Kaur ... Appellant.
Versus.
Brihanmumbai Municipal Corporation
and others. ... Respondents.

Shri M.P.Vashi for the Appellant.

Ms.Geeta Joglekar for the Respondent No.1-BMC.

Shri Y.M.Chaudhary for the Respondent No.2.

Shri Rajesh Kachare for the Respondent No.3.

CORAM : ABHAY S. OKA, J.

DATED : 28th March, 2005.

P.C.:

1. Heard the leaned Counsel appearing for the parties. After arguing the matter for sometime Shri Vashi submitted that the order passed by the learned trial Judge is not clear and the Appellant may face difficulty in case she takes out a fresh Notice of Motion for claiming reliefs in terms of prayer clause (c) of the Notice of Motion No.4450 of 2004 which is already disposed of.

2. Relevant part of the impugned order reads thus:

> . "Plaintiff is directed to lead detail oral evidence on oath for the relief of prayer (c). Now the motion for consideration of prayer is

adjd.to 9.3.05.

. After passing this order, the learned Advocate Mr.Vashi for the plaintiff made a statement at the Bar that in spite of allowing the plaintiff to lead the evidence on prayer (c), at this stage, whole motion be disposed off with a liberty to take out fresh motion if illegal construction is found."

It is obvious from the order that the learned Judge did not dispose of prayer (c) as he directed the parties to lead evidence for considering prayer clause (c). The learned trial Judge has thereafter recorded a statement of the learned Counsel appearing for the Appellant that instead of directing the parties to lead evidence, Notice of Motion may be disposed of with liberty to take out fresh Notice Motion if any illegal construction is found. However, in the further part of the order while directing that the Notice of Motion is disposed of, the learned trial Judge has not reserved liberty to take out fresh Notice of Motion in so far as prayer clause (c) is concerned.

3. After having heard the learned Counsel appearing for the parties I find that the learned trial Judge did not decide the Notice of Motion on merits in so far as prayer (c) is concerned as he felt that the parties will

have to lead evidence in respect of the said prayer. After passing the said order, the learned trial Judge disposed of the Motion on the request made by the learned Counsel appearing for the Plaintiff/Appellant. It is, therefore, clear that the Notice of Motion has been disposed of without considering the merits of prayer clause (c) made therein. Therefore, notwithstanding disposal of the Notice of Motion No.4450 of 2004, the Appellant/Plaintiff can always takes out a fresh Notice of Motion praying for the relief in terms of prayer clause (c) of the earlier Notice of Motion, if occasion for filing such Motion arises. With the aforesaid clarification, the Appeal is disposed of with no order as to costs.

Judge.